REL: July 8, 2022

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-19-0506

Cedricka Jacole Thornton

v.

State of Alabama

Appeal from Houston Circuit Court
(CC-17-1512)

PER CURIAM.

Cedricka Jacole Thornton was convicted of murder for intentionally killing Devontay Davis, a violation of § 13A-6-2, Ala. Code 1975, and the Houston Circuit Court sentenced her to 50 years' imprisonment.

On appeal, Thornton argues that her conviction and sentence must be reversed and that she is entitled to a new trial because the circuit court refused to instruct the jury on self-defense when, she says, the "evidence presented at trial cleared the extremely low threshold required for a jury instruction on self-defense." (Thornton's brief, p. 10.) The State, on the other hand, argues that this Court should affirm Thornton's conviction and sentence because the circuit court was not required to instruct the jury on self-defense when "the facts, as set forth by Thornton, present no reasonable, rational, or plausible theory of self-defense." (State's brief, p. 8.) Although Thornton is correct that the circuit court erred when it failed to instruct the jury on self-defense, under the circumstances in this case, the circuit court's error was harmless.

It has long been the law in Alabama that "[a] trial court has broad discretion when formulating its jury instructions." Williams v. State, 795 So. 2d 753, 780 (Ala. Crim. App. 1999) (citing Williams v. State, 611 So. 2d 1119, 1123 (Ala. Crim. App. 1992)). That discretion, however, is not unlimited.

> "'"The general rule is that 'every accused is entitled to have charges given, which would not be misleading, which correctly state the law of his

case, and which are supported by any evidence, however weak, insufficient, or doubtful in credibility.' Chavers v. State, 361 So. 2d 1106, 1107 (Ala. 1978). If there is 'any evidence, however slight, tending to support' that the defendant acted in self-defense, the issue should be submitted to the jury. King v. State, 71 Ala. 1, 4 (1881). In most cases, the issue of self-defense is one of ultimate fact solely for determination by the jury, Domingus v. State, 94 Ala. 9, 11 So. 190 (1892), however 'unsatisfactory and inconclusive to the judicial mind' the evidence of self-defense may appear. Burns v. State, 229 Ala. 68, 70, 155 So. 561, 562 (1934).

"'"However, the court should not instruct on the law of self-defense where there is no evidence to sustain the plea. Raines v. State, 455 So. 2d 967, 974 (Ala. Cr. App. 1984); Tarver v. State, 137 Ala. 29, 34 So. 627 (1903); C. Gamble, McElroy's Alabama Evidence, 457.02(5) (3d ed. 1977). '[I]n the absence of all evidence having a tendency to show that at the time of the killing the accused was in imminent peril of life, or grievous bodily harm, or of the existence of circumstances creating in his mind a reasonable belief of such peril, ... these instructions [are] abstract.' King, 71 Ala. at 4-5. A trial judge may properly refuse to charge the jury on self-defense where he determines that 'the defendant could

> not set up self-defense under the facts.' Consford v. State, 15 Ala. App. 627, 634, 74 So. 740, 743, cert. denied, 200 Ala. 23, 75 So. 335 (1917).

Diggs v. State, 168 So. 3d 156, 160-61 (Ala. Crim. App. 2014) (quoting King v. State, 478 So. 2d 318, 319 (Ala. Crim. App. 1985) (emphasis added in King).

At the close of all the evidence in her trial, Thornton asked the circuit court to instruct the jury on self-defense. The State objected to Thornton's request. The State argued that Thornton had not presented any "testimony regarding self-defense to justify an instruction." (R. 658.) In response, Thornton argued that, although she gave conflicting accounts of how Davis died, her "last story" was that Davis was holding scissors and threatening her with them; that, while Davis was raping her, she kicked him to get away from him; and that the scissors that he was threatening her with went into his chest.

In denying Thornton's request for a self-defense jury instruction, the circuit court relied upon this Court's holding in Lovell v. State, 521 So. 2d 1346 (Ala. Crim. App. 1987). The request was denied because Thornton's evidence of self-defense established that she accidentally

killed Davis when she kicked him to stop him from raping her, not because she failed to present any evidence of self-defense.

As set out above, on appeal, Thornton argues that the circuit court erred when it denied her request for a self-defense instruction because, she says, the evidence presented at trial "cleared the extremely low threshold" for such an instruction and because the circuit court's reliance on Lovell v. State, 521 So. 2d 1346 (Ala. Crim. App. 1987), to deny her request, "was misplaced." (Thornton's brief, pp. 10, 16.) The State does not address the circuit court's reliance on Lovell to deny Thornton's request because, it says, "assuming, arguendo, that the … court erroneously relied on that decision, the court nonetheless correctly rejected Thornton's request for a self-defense instruction." (State's brief, p. 17.) In the State's view, Thornton simply presented "no evidence to support [her] claim that she acted in self-defense against Davis," regardless of whether the circuit court correctly applied Lovell to Thornton's case. (State's brief, p. 10.)

We start our analysis by examining whether the evidence presented at trial, when viewed in a light most favorable to Thornton, supported a jury instruction on self-defense. Here, the evidence at trial showed that

Thornton and Davis had a volatile relationship. Thornton's neighbors told police that Thornton and Davis "regularly had loud arguments that can be heard inside the apartments through the walls" and that, about two weeks before Davis's death, one of Thornton's neighbors heard a female yell, "Bring the bitch to me, and I'll beat her ass." (R. 397, 398.) "[I]t was [one neighbor's] understanding [that] the male resident cheated regularly on the female." (R. 401.) Cellular-telephone records obtained by law enforcement for both Thornton's and Davis's cellular telephones showed their volatile relationship, revealing conversations in which Thornton and Davis had accused each other of cheating one another, in which they had argued with each other, and in which they had broken up and gotten back together.[1] Law enforcement also discovered two reports in which Thornton had accused Davis of domestic violence. (R. 391.) Despite their up-and-down relationship, Thornton and Davis had made

[1]The State also presented testimony from Imani Wheeler who dated Davis "on and off" and who knew that Thornton was Davis's "child's mother." (R. 406-07.) Thornton "harassed" Wheeler on Facebook because, Wheeler said, Thornton "was basically upset that [they] were together." (R. 408.)

plans to get together on the evening of February 8, 2017, to celebrate Thornton completing nursing school and Davis getting into the military.

But in the early morning hours of February 9, 2017, Thornton called 911 requesting that an ambulance come to her home to attend to Davis.[2] Thornton told the 911 operator that Davis was throwing scissors up in the air, that they went into his chest, and that he pulled them out. David Saxon, a sergeant with the Dothan Police Department, responded to Thornton's apartment at about 1:30 a.m. By the time Sgt. Saxon arrived, two other officers were already at Thornton's apartment. Sgt. Saxon went upstairs in Thornton's apartment and found Davis "laying [sic] on his back unresponsive" with a wound in the center of his chest. (R. 189, 192.) The emergency medical personnel who arrived to treat Davis transported him to the hospital where he was pronounced dead at 2:08 a.m.

According to Sgt. Saxon, Thornton said that Davis "was playing with a pair of scissors, and he accidentally stuck himself." (R. 200.) Thornton did not tell Sgt. Saxon that Davis had assaulted her, that she

[2]A recording of Thornton's 911 call was admitted at trial as State's Exhibit 1. (R. 185.)

and Davis had been in a fight, that Davis had sexually assaulted her, or that Davis had tried to rape her. Sgt. Saxon also said that he did not see any injuries to Thornton.

Jerry Moore, an investigator with the Dothan Police Department, also responded to Thornton's apartment. At some point, Thornton went to the police department and Inv. Moore interviewed her there. After waiving her Miranda[3] rights, Thornton gave a statement to Inv. Moore.[4] During that interview, Thornton said that she and Davis had planned to get together the evening of February 8, 2017, to celebrate his getting into the military and her completing nursing school. Inv. Moore said that Thornton explained:

> "She said that -- she mentioned that part of the celebration, the celebratory that they planned on doing was to have sexual intercourse. And she stated that they did -- she showered, and then they had sexual intercourse, and then he was -- they were having a few drinks. Well, she actually stated that he did not have any drinks, because he was only drinking water, preparing for the military. She stated that he was lying on the floor, and he was cutting a pair -- an undergarment that had been ruined somehow and cutting it into a thong that he wanted her to wear and that she went downstairs to fix a drink, and as she come up the stairs, she saw him twirling the

[3]Miranda v. Arizona, 384 U.S. 436 (1966).

[4]Thornton's statement was video recorded and was admitted at her trial as State's Exhibit 20.

> scissors with -- the way she represented, with two fingers together, twirling the scissors like this with her -- and as she was coming up the stairs, she saw the scissors go up in the air in the apartment and then land inside of his chest. And then, that's when she said she -- she called for emergency services."

(R. 273-74.) Inv. Moore said that when he told Thornton that Davis was dead, the "interview kind of shifted." (R. 275.) At that point, Thornton told Inv. Moore that the "sexual intercourse was not wanted, and that [Davis] forced her to have sexual intercourse." (R. 275.) Thornton told Inv. Moore that

> "she was faced away from [Davis] while the intercourse was going on. And she said at one point that she did kick back, and she turned around and saw that he was laying [sic] there on the floor with the scissors in him. At that point, she said the scissors kind of just fell down and fell out of him. And the only other statement we -- she made to me as far as paraphrasing is concerned, is after I -- she returned from the Medical Center from having -- when she -- when she expressed that she was -- she believed -- she alleged that he had sexually assaulted her, I immediately asked her if she wanted to go to the hospital to provide that -- to be cared for, and she said yes."

(R. 275-76.) Inv. Moore said that Thornton described the sexual assault as follows:

> "That [Davis] got on top of her, and he forcefully penetrated her. She stated that he did ejaculate inside of her. She stated that he attempted to do it again by inserting into her vagina. And then she said she tried to push away with her hands and close her legs, but that he was too strong. And then she said that he choked her several times, and she said -- we

> got to that and I said, you know, in depth, and she said approximately four to five times using both hands around her neck and his forearm and bicep. And later on, she said that each time, it was to the point where she could not breathe, actually stepping her from breathing."

(R. 282.) Thornton then went to the hospital for a sexual-assault examination.

At the hospital, Brenda Maddox assessed Thornton. Thornton reported to Maddox that Davis had threatened her with death by holding "scissors to her face" and saying to her, "I'm this close to killing you, Bitch" and saying, "Bitch, die," while he choked her. (R. 161.) Thornton also told her that Davis slapped her across the face, choked her, pulled her hair, and tried to tie her up with a "hair scarf." (R. 162-63.) Maddox said, however, that during her head-to-toe assessment of Thornton, she did not see anything abnormal on her body. But Maddox did report seeing abnormalities in her examination of Thornton's genitalia. Specifically, that Thornton's "fossa navicularis and the posterior fornix were both reddened," that her cervix was bruised, and that there was a "one-and-a-half centimeter laceration to the perineum." (R. 165.) Maddox said that Thornton told her the following story about what had happened with Davis:

> "At some point, [Davis] had a pair of scissors that he was using to make a thong for her from a pair of shorts that had gotten ripped in the washing machine. [Thornton] said she wasn't going to wear them, and they started fussing, because he was getting jealous and stuff, wanting to see [her] phone and all. At approximately midnight, [Davis] started getting rough and screaming and choking [her]. [Davis] put a pillow over [her] face, threw [her] legs up and over and did it. Then [Thornton] states that [Davis] turned her over, pushed her face hard into the pillow and put his fingers in her anal and in the front. [Thornton] states that he tried to put his penis in the back, but couldn't, and did put it in her vagina. He did ejaculate in her vagina."

(R. 169.) Maddox explained that she could not definitively say that, based solely on her injuries, Thornton was the victim of a sexual assault. (R. 170.) But vaginal swabs taken from Thornton during the sexual-assault examination revealed the "presence of semen." (R. 324.) Further, DNA testing on the vaginal swabs showed a mixture of genetic traits from at least two people: "Thornton is included as a contributor to these mixtures -- as a potential contributor to these mixtures, and a major component of the DNA detected from both of those items matched the profile of Devontay Davis." (R. 326.)

Dr. Alfredo Paredes conducted an autopsy on Davis. (R. 445.) Dr. Paredes found that Davis died as a result of being

> "stabbed one time in the center part of the chest, a little above the left nipple, but more centrally. That stab penetrated the

> -- obviously the chest wall, the soft tissue and the sternum, which is the chest blade, which is a very thick bond we have here in the chest, and entered the heart. And I described that the -- my estimation of the depth of the penetration was anywhere from 4.5 to 5 inches in length."

(R. 451.) Dr. Paredes concluded that Davis's manner of death was homicide. (R. 452.) Dr. Paredes opined that Davis's wound could not be caused by someone throwing scissors up in the air and them coming back down and hitting Davis. Dr. Paredes explained:

> "It may have injured or punctured his skin, but not down to the right ventricle of the heart. Impossible.
>
> "….
>
> "I say it's impossible. I never seen it. I don't know. But I would say it's impossible. There's not enough gravity or force to do that in order to enter the chest."

(R. 459.) Dr. Paredes disputed Thornton's report that the scissors fell out of Davis's chest, explaining: "That's very difficult to believe, because that instrument must have been cut tightly inside the chest plate. In my opinion, somebody had to remove the pair of scissors." (R. 483.) But Dr. Paredes conceded that, "if he moved, could those scissors just fall off of him? That's a possibility. I wasn't there, so I don't really know." (R. 484.)

On cross-examination, Thornton questioned Dr. Paredes as follows:

> "[Thornton's counsel]: Could there have been other ways the injury could have happened? I'll give you an example of maybe if he had the scissors and somebody kicked him with the scissors in? Could that kind of force penetrate --
>
> "[Dr. Paredes]: He had the scissors in his hand and somebody --
>
> "[Thornton's counsel]: Kicked him?
>
> "[Dr. Paredes]: Kicked him? I guess it is possible. But you need a lot of force for that.
>
> "[Thornton's counsel]: So it took a lot of force to get those scissors in his chest?
>
> "[Dr. Paredes]: Absolutely.

(R. 486.)

Although Thornton gave conflicting accounts of what happened the night Davis died, there was evidence presented indicating that she acted in self-defense when Davis raped her, threatened her with scissors, and that Thornton kicked him and the scissors entered his chest.

The State makes a persuasive case in its brief on appeal for disbelieving Thornton's theory of self-defense and presents compelling reasons to conclude that Thornton's self-defense claim is, as the State puts it, "preposterous" or "wholly implausible." But the law is clear:

> "'[E]very accused is entitled to have charges given, which would not be misleading, which correctly state the law of his

> case, and which are supported by any evidence, however weak, insufficient, or doubtful in credibility.' Ex parte Chavers, 361 So. 2d 1106, 1107 (Ala. 1978). '"'It is a basic tenet of Alabama law that "a party is entitled to have his theory of the case, made by the pleadings and issues, presented to the jury by proper instruction, ..."'"' Ex parte McGriff, 908 So. 2d 1024, 1035 (Ala. 2004), quoting Winner Int'l Corp. v. Common Sense, Inc., 863 So. 2d 1088, 1091 (Ala. 2003), quoting in turn other cases."

Williams v. State, 938 So. 2d 440, 444-45 (Ala. Crim. App. 2005) (emphasis added).

Because Thornton presented evidence indicating that she acted in self-defense and because this Court does not reweigh evidence to determine whether Thornton's claim is, as the State puts it, "wholly implausible," we reject the State's argument that the circuit court properly denied her request for a jury instruction on self-defense.

Having determined that there was, at least, some evidence of self-defense, we now address the circuit court's reason for denying Thornton's request for a jury instruction on self-defense. As explained above, the circuit court denied Thornton's self-defense instruction because it concluded that, pursuant to Lovell, 521 So. 2d 1346, there is no such thing as accidental self-defense and that a self-defense instruction was not warranted because Thornton never asserted that she intended to cause

Davis's death. The circuit court's reliance on Lovell to deny Thornton's self-defense instruction is misplaced.

In Lovell, James Lovell was indicted for murder and was convicted of manslaughter for killing Thomas Naples. Lovell killed Naples during a fight in a bar parking lot. According to Lovell, during an altercation with another person Naples got out of a van with "some sort of tool in his hand." 521 So. 2d at 1348. Lovell then hit Naples with a crowbar and "Naples fell back in the van." Id. Lovell said that "when he walked around to the side of the van, Thomas Naples jumped out and hit him on the face and the head, took the [crow]bar from him, and stated that [Lovell] 'was dead.'" Id. Lovell said that, when "he was stumbling back," he "pulled the knife out" of his pocket and "when he 'came up with the knife,' Naples was standing there and the knife pierced his body." Id. Naples died from the stab wound.

On appeal, Lovell argued, in part, that the circuit court "erred in failing to adequately charge the jury on self-defense." Id. This Court rejected Lovell's argument explaining that Lovell

> "claimed that he did not intend to kill Thomas Naples, nor did he intend to use the knife. [Lovell] stated that Thomas Naples fell forward onto the knife as [Lovell] was 'coming up.' There

> is no legal defense of 'accidental self-defense.' Timmons v. State, 487 So. 2d 975 (Ala. Cr. App. 1986).
>
> > "'"We note that 'self-defense and accident are inconsistent defenses, and the defendant alone may not provide the basis for submitting such inconsistent defenses to the jury.' [State v.] Randolph, 496 S.W.2d [257] at 262 [(Mo. 1973)]; [State v.] Ameen, 463 S.W.2d [843] at 845 [(Mo. 1971)]. 'Taking human life in self-defense is an affirmative, positive, intentional act, and the law does not recognize the anomalous doctrine of accidental self-defense.' State v. Whitchurch, 339 Mo. 116, 96 S.W.2d 30, 35 (1936) (citations omitted)." Wakefield v. State, 447 So. 2d 1325, 1326 (Ala. Cr. App. 1983).'
>
> "Timmons v. State, supra, at 986."

Lovell, 521 So. 2d at 1349. In short, Lovell merely recognizes a "well accepted principle of law that a claim of self-defense necessarily serves as an admission that one's conduct was intentional." Lacy v. State, 629 So. 2d 688, 689 (Ala. Crim. App. 1993) (citing Harper v. State, 534 So. 2d 1137 (Ala. Crim. App. 1988)). Thornton's case is distinguishable from Lovell.

Here, unlike in Lovell, Thornton's act of self-defense was intentional. As set out above, the evidence presented at trial, when viewed in a light most favorable to Thornton, established that, when Davis was raping Thornton and threatening her with scissors, Thornton

kicked him in order to defend herself. According to Thornton, as a result of her kicking Davis, the scissors Davis was holding pierced his chest. Although the trial court focused, in part, upon a distinction between the scissors being in Davis's hand rather than in Thornton's hand, this distinction is not determinative of the issue whether a self-defense instruction should have been given. It is true that Thornton's version of what happened leads one to the conclusion that she did not intend for the result to occur (i.e., that Davis die), as this Court held in Lacy, supra, but it is the intended conduct and not the intended result that dictates whether a person is entitled to an instruction on self-defense. See also Varnado v. State, [Ms. CR-18-0673, July 9, 2021] ___ So. 3d ___, ___ n. 10 (Ala. Crim. App. 2021) (McCool, J., concurring in part and dissenting in part) (recognizing that "intentional conduct committed in an alleged act of self-defense does not necessarily carry with it the specific intent to kill"). Because Thornton's act was intentional, even if the result of her act was not intended, this Court's holding in Lovell does not operate to bar a self-defense instruction in this case.

This Court's view that one must act only intentionally to be entitled to a jury instruction on self-defense is consistent with the plain language

of Alabama's self-defense statute. Section 13A-3-23(a), Ala. Code 1975, provides that "[a] person is justified in using physical force upon another person in order to defend … herself … from what … she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and … she may use a degree of force which … she reasonably believes to be necessary for the purpose." That section further provides that a person may elevate their level of force to

> "deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense …, if the person reasonably believes that another person is:
>
> > "….
> >
> > "(3) Committing or about to commit a … forcible rape, or forcible sodomy."

§ 13A-3-23(a).

In other words, Alabama's self-defense statute allows someone to assert self-defense as a justification to a charged offense when two conditions are established: (1) they use the appropriate level of force under the circumstances -- i.e., "physical force" or "deadly physical force" -- to defend either themself or a third person, and (2) they have a reasonable belief that such force is necessary to defend either themself or a third person from the actions described in § 13A-3-23(a). Nowhere in

Alabama's self-defense statute does it require that a person who engages in an intentional act of self-defense also intend that a certain result occur from their use of force. Rather, the only "intent" that one must have under Alabama's self-defense statute is that the person must engage in an intentional act of self-defense -- e.g, kicking, shooting, stabbing, etc. -- that stems from a "reasonable belief" that the use of force is necessary.

So, although a person who acts accidentally and accidentally kills another person cannot claim that they acted in self-defense, see § 13A-3-23(a), and Lovell, supra, a person like Thornton who acts intentionally, harbors a "reasonable belief" that the act of self-defense is necessary under the circumstances, and accidentally causes the death of another person is entitled to an instruction under Alabama's self-defense statute.[5] To hold that self-defense is available to only those people who intend that a certain result occur would add a requirement to § 13A-3-23(a) that simply is not there. This Court "'is not at liberty to rewrite statutes or to substitute its judgment for that of the Legislature.'" Slagle

[5]Notably, Alabama's Pattern Jury Instruction -- Criminal for self-defense under § 13A-3-23, does not include an instruction that the person who is claiming self-defense must intend for a certain result to occur.

v. Ross, 125 So. 3d 117, 126 (Ala. 2012) (quoting Ex parte Carlton, 867 So. 2d 332, 338 (Ala. 2003)).

Although the circuit court erred when it failed to instruct the jury on self-defense, that error does not end our inquiry. Indeed, this Court has explained that a circuit court's failure to give a requested jury instruction is subject to harmless-error analysis. See Fitch v. State, 851 So. 2d 103, 128 (Ala. Crim. App. 2001) (holding that the failure to give the defendant's requested jury instructions was harmless error).

In determining whether the erroneous refusal to give a jury instruction is harmless error, the standard this Court applies is whether the result of the trial would have, beyond a reasonable doubt, been the same even if the instruction had been given. Simmons v. State, 797 So. 2d 1134, 1173 (Ala. Crim. App. 1999). See also Thomas v. State, 824 So. 2d 1, 38 (Ala. Crim. App. 1999) (noting that a trial court's erroneous refusal to give a requested jury instruction is harmless error "where evidence [is] such that the jury's verdict would not have been any different had the instruction been given" (citing People v. Olinger, 112 Ill. 2d 324, 493 N.E.2d 579 (1986))), overruled on other grounds by Ex parte Carter, 889 So. 2d 528 (Ala. 2004); and State v. Nottingham, 289

P.3d 949, 956 (Ariz. Ct. App. 2012) ("If the [S]tate can show beyond a reasonable doubt that the [erroneous refusal to give a requested jury instruction] did not affect the verdict, the error is harmless."), abrogated on other grounds by State v. Bigger, 492 P.3d 1020 (Ariz. 2021).

In this case, as explained above, the only evidence supporting Thornton's self-defense theory was her statement to law enforcement that she "kick[ed] back" at Davis while he was allegedly raping her. Although that statement certainly supports a finding that Thornton intentionally kicked at Davis, no reasonable juror could infer from Thornton's statement that she intended to kill Davis when she "kick[ed] back" at him. See Varnado, ___ So. 3d at ___ n.10 (McCool, J., concurring in part and dissenting in part) (noting that a defense of self-defense constitutes an admission that the defendant's conduct was intentional but that this intentional conduct does not "necessarily carry with it the specific intent to kill"). The intent to kill must usually be inferred from the circumstances, Abrams v. State, 331 So. 3d 1184, 1191 (Ala. Crim. App. 2021), and the circumstances established by Thornton's second statement do not support a finding that she intended to kill Davis. Of course, a person may intend to kill while defending herself, and, if

Thornton had claimed that she had taken the scissors from Davis and stabbed him because he was raping her, then, certainly, the jury could have found that she had the intent to kill Davis, but that is not what she said happened. Instead, Thornton's statement, if believed, supports only one conclusion -- that, although Thornton intentionally kicked at Davis, his death was unintentional. Indeed, as to how the scissors came to be embedded in Davis's chest, Thornton told law enforcement: "I don't know how that happened, for real." (State's Exhibit 20, Vol. 3, 40:30-35.)

The fact that Thornton's specific self-defense theory did not support a finding that she intentionally killed Davis is significant to our harmless-error analysis because the jury, by its verdict, found that Thornton did intentionally kill Davis by stabbing him with a pair of scissors.[6] To put it another way, the jury necessarily found by its verdict that Thornton possessed the intent to kill Davis and thereby rejected her self-defense theory that included her denial of any such intent. Thornton's theory of self-defense is thus factually incompatible with the

[6]The indictment, which the trial court read to the jury during its jury charge, alleged that Thornton "did intentionally cause the death of [Davis] by STABBING HIM WITH A PAIR OF SCISSORS." (C. 15 (capitalization in original).)

factual finding underlying the jury's verdict, which means the jury accepted the State's theory and evidence and rejected Thornton's theory and evidence.

The harmless-error analysis in this case is very fact-specific. In some cases, a finding that the defendant intentionally killed the deceased might not mean that the jury rejected a self-defense theory because, as noted, a person may claim that she intended to kill in self-defense. However, the factual basis for self-defense in this case, if believed, means that Thornton did not intend to kill Davis but, rather, intended only to kick Davis. The jury clearly weighed the evidence and, given its verdict, rejected this theory. There is no reason to believe that the jury would have weighed the evidence any differently or made any different credibility determination regarding Thornton's evidence -- which the jury clearly rejected -- had the trial court given the requested self-defense instruction.

Therefore, we conclude, beyond a reasonable doubt, that the result of Thornton's trial would have been the same even if the circuit court had given Thornton's requested instruction on self-defense. See State v. Haygood, 308 Kan. 1387, 1407, 430 P.3d 11, 27 (2018) (holding that the

erroneous failure to give a self-defense instruction was harmless error because "a self-defense instruction would not have changed the verdict"); People v. Koontz, 27 Cal. 4th 1041, 1086, 46 P.3d 335, 365, 119 Cal. Rptr. 2d 859, 895 (2002) (holding that, by virtue of its verdict, the jury "necessarily rejected the unreasonable self-defense theory" and that any error in failing to give a self-defense instruction was therefore harmless); State v. Benson, 600 S.W.3d 896, 907 (Tenn. 2020) (noting that, "even if the trial court did err by not instructing the jury on self-defense …, such an error would have been 'harmless beyond a reasonable doubt because no reasonable jury would have accepted the defendant's self-defense theory'" (citation omitted)); and Everette v. Roth, 37 F.3d 257, 262 (7th Cir. 1994) (holding that any error in failing to give a self-defense instruction was harmless because the jury's verdict indicated that it had rejected the defendant's self-defense theory).

Based on the foregoing, this Court holds that, although the circuit court erred when it refused Thornton's request for a jury instruction on self-defense, that error was harmless beyond a reasonable doubt. Therefore, Thornton is not entitled to any relief on appeal, and her conviction and sentence are affirmed.

AFFIRMED.

McCool and Minor, JJ., concur. Windom, P.J., and Kellum, J., concur in the result. Cole, J., dissents.